



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ryder Aviall, Inc.

File: B-249920

Date: December 23, 1992

Paul Shnitzer, Esq., and Kathleen E. Karelis, Esq.,
Crowell & Moring, for the protester.
Maj. Ronald K. Heuer, Esq., Department of the Army, for the
agency.
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protest that the agency was required to structure a private/public competition for engine overhauls to permit private offerors to furnish a portion of parts used in the overhaul process on a cost-reimbursable basis in order to equalize the competition with public sector offerors is denied where statute authorizing the competition does not require such equalization.
2. Protest that solicitation did not provide for the submission of sufficient data from public sector offerors to support a thorough cost realism analysis is denied where record shows that supporting data was requested for all elements of cost.
3. Protest that estimated quantities of parts to be supplied in engine overhauls contained in a solicitation are inadequate is denied where record shows they were current and reasonably accurate.

DECISION

Ryder Aviall, Inc. protests the terms contained in request for proposals (RFP) No. DAAJ09-92-R-0764, issued by the Department of the Army as a competition between private sector firms and Department of Defense (DOD) depot maintenance activities for the overhaul of an indefinite quantity¹ of T63-A-720 gas turbine engines which are manufactured by the Allison Division of the General Motors

¹The RFP contained a minimum estimated quantity of 50 engine overhauls and a maximum estimated quantity of 483 overhauls.

Corporation. Ryder principally alleges that, as amended, the RFP establishes an unfair competition between private sector and public sector offerors, the RFP does not request sufficient information from public sector offerors to support an adequate cost comparison analysis, and the agency's estimates of engine parts usage are defective.²

We deny the protest.

This competition is being conducted pursuant to special statutory authorization contained in the DOD Appropriation Act for Fiscal Year 1992, Pub. L. No. 102-172, § 8120, 105 Stat. 1204 (1991). Among other things, the statute permits DOD to acquire the repair of aircraft components through competition between DOD depot maintenance activities and private firms. While generally we do not review an agency's decisionmaking process concerning whether work should be performed in-house or by a contractor, we have considered as an exception to this rule an agency's use of the procurement system to aid in its decisionmaking and, accordingly, we have considered protests against procurements using solicitations and conducted under statutory authorities similar to the one here. Newport News Shipbuilding and Dry Dock Co., B-221888, July 2, 1986, 86-2 CPD ¶ 23, aff'd on recon., B-221888.2, Oct. 15, 1986, 86-2 CPD ¶ 428; Hoboken Shipyards, Inc., B-224184.2, Jan. 20, 1987, 87-1 CPD ¶ 70.

The RFP, which was issued on July 2, 1992, contemplated the award of a contract to the lowest priced, responsible offeror. It provided for offerors to submit fixed unit prices for the complete overhaul of the engines. These prices were to include labor costs and a number of "mandatory" replacement parts required by the statement of work (SOW) to be used in each engine overhaul.

As originally issued, the RFP also required contractors to provide all other replacement parts (except those relatively few parts which were to be supplied by the Army as "Government Furnished Parts")--the need for which could vary

²Ryder also asserted in its protest that the evaluation factors listed in the RFP did not account for quality and that the Cost Comparability Handbook the agency proposed to use to evaluate the realism of public sector offeror costs did not treat public and private sector offerors uniformly and failed to account for certain indirect costs likely to be incurred by public sector offerors. The Army responded to these arguments in its agency report and the protester has not addressed the agency's responses. Accordingly, we find the issues to be abandoned and will not consider them further. Arjay Elecs., Corp., B-243080, July 1, 1991, 91-2 CPD ¶ 3.

from engine to engine during the overhaul process--on a cost-reimbursable basis. These parts are called "contractor furnished parts"--CFP. While the original RFP schedule required offerors to furnish cost estimates for CFP, these cost estimates were not to be evaluated in the award selection.

The RFP also provided for a cost realism analysis to be performed with respect to offers from the public sector and required those offerors to submit detailed supporting cost data for this purpose; the cost realism analysis was designed to assist the agency in fulfilling the requirement contained in the above-cited statutory authorization that, in public/private sector depot maintenance competitions, the Secretary of Defense certify that successful offers include "comparable estimates of all direct and indirect costs for both public and private bids."

Following a preproposal conference on July 20, in which a prospective private sector offeror requested the agency to reevaluate whether CFP should be solicited on a cost-reimbursable basis, the Army issued Amendment/Modification No. 0001 on August 3. In principal part, the amendment required offerors to include CFP within their fixed prices for the engine overhauls. The agency reports that it decided to include CFP within the fixed price for the following reasons: (1) the T63-A-720 Allison engine had previously been the subject of a number of successful fixed-price competitions for overhaul requirements; (2) an estimated 50 to 70 percent of the total costs of engine overhaul would not be evaluated if CFP were retained on a cost reimbursable basis; (3) the detailed SOW provided a reasonable basis for identifying performance uncertainties and accurate estimates of their cost impacts; (4) the RFP contained reliable historical data on parts consumption for the engines in question in the form a "Depot Maintenance Parts Requirements Lists" (DMPRL), allowing offerors to gauge the amount of CFP required to overhaul the engines under the contract; (5) numerous private sector offerors indicated that they were willing to accept a firm, fixed-priced contract; and (6) firm, fixed-pricing (although transferring additional risk to the contractor), would promote maximum incentive for cost control upon the contractor and result in a minimum administrative burden for the government.

Ryder's first objection to the RFP as amended is that the inclusion of the CFP within the fixed price creates an "unlevel playing field," because public sector offerors can purchase CFP through the DOD supply system at substantially lower prices, while private sector offerors are precluded by Federal Acquisition Regulation (FAR) § 51.101 from using the same system when they are not contracting with the

government on a cost-reimbursable basis.³ Ryder also asserts that the increased risk to private sector offerors by making CFP a part of the fixed price is not counterbalanced by any decreased risk to the government; the protester argues that the conversion of CFP to a fixed-price basis may actually increase the risk to the government insofar as public sector offerors may--with the benefit of lower priced CFP, and without any inherent incentive to control costs since overruns will be borne by the taxpayer--be able to submit higher labor rates and mandatory replacement part prices and still win the competition, thereby effectively precluding the government from receiving the benefit of lower labor rates and mandatory replacement part prices which could be offered by private sector offerors if CFP were on a cost-reimbursable basis and not part of the competitive price analysis.

As a preliminary matter, we have examined Ryder's analysis of recent public sector and private sector parts purchases (which it uses to buttress its position that the government does in fact have a considerable advantage in obtaining parts at lower prices), together with the agency's argument that a public sector offeror may not necessarily have an advantage when applicable administrative surcharges are added to the price of parts procured through the supply system, and find the record to be inconclusive at best as to which category of offeror--public or private--has an advantage in purchasing parts. This is especially true since, as the agency points out without rebuttal from Ryder, public sector offerors must incur additional material handling charges above the normal surcharge which would be applied to a public sector user of the system. As indicated below, however, we find that the existence of a price advantage, if any, is irrelevant to the resolution of this protest.

We find no support for Ryder's assertion that the statute seeks to establish a "level playing field" in the manner suggested by the protester. The statute merely requires a certification that all elements of cost to the government--whether greater or lesser owing to inherent advantages that a given category of offeror may possess--are considered in

³The "supply system" referred to consists in large part of contracts negotiated with suppliers by the government, usually at preferential rates, but with quantity limitations. FAR § 51.101 does not require the agency to authorize a cost-reimbursement contractor to use the system but permits it in the discretion of the agency. In this case, the Army reports that it is unlikely that such authorization would be granted to a private sector contractor.

determining whether a public sector offeror or a private sector offeror should be awarded a contract. To this end, and recognizing that there are inherent differences between public and private offerors, we have in the past recommended that contracting agencies perform thorough cost realism analyses of public sector offers to insure that the certifications required by statute are based on reasoned judgments of the actual cost to the government. Hoboken Shipyards, Inc., supra. The statute does not, however, mandate that each element of a public/private competition be equalized by reducing risks which may pertain to firms in the private sector.

Moreover, the purpose of this procurement, consistent with the statute, was to obtain engine overhaul services in toto, inclusive of labor and materials, at the lowest cost to the Army. Ryder's argument to the effect that limiting the price competitive aspects of the procurement to labor rates and mandatory replacement part prices by placing CFP on a cost-reimbursable basis is in the government's best interest ignores the agency's overall needs. The Army is not seeking to purchase labor and different categories of parts separately. It is seeking to purchase a total "package" of overhaul services at the lowest overall cost to the government and we find no support for the proposition that the agency is required to segment its needs, as Ryder suggests, for the benefit of one category of offeror. Finally in this regard, we agree with the Army that Ryder's position as to what public sector offerors might do in terms of offering higher labor rates and mandatory replacement part prices is speculative at best and that the cost realism analysis, to be discussed below, serves as an adequate protection against possible unrealistic pricing.

Next, Ryder alleges that the RFP fails to require sufficient cost data from public sector offerors to insure an adequate cost realism analysis by pointing to an abbreviated Cost Comparability Worksheet which is appended to the solicitation and which, in and of itself, only appears to contain a small amount of space to insert totals for various cost categories such as labor, materials, indirect costs, etc. It is Ryder's position that the information to be inserted on the worksheet cannot be detailed enough to permit an examination of all the elements of public sector costs.

Ryder's reading of the solicitation fails to take into account that the worksheet is designed as a guide, to be supplemented with additional written data as necessary to cover all cost elements. Further, Section L-12 of the solicitation requires the submission and certification of data supporting all public sector costs and requires public sector offerors to designate representatives to respond to

cost inquiries from the Army. Finally, the Army has stated that it intends to require public offerors to submit detailed information in the form of bills of materials to aid in support of its cost realism analysis.

Ryder suggests that the agency may not obtain this information from public sector offerors in or after their final offers for purposes of the cost realism analysis because to do so would be to permit an offeror to supply, outside of the competitive framework established by the RFP, information necessary to determine the acceptability of the offer.

The solicitation requires the submission of detailed supporting cost data to accompany the proposals of public sector offerors. The contracting agency does not state that it intends to obtain this information after the submission of final offers and we, therefore, have no basis to assume that they will do so. Since this procurement is conducted by the use of negotiated procedures, during the discussion process the agency may require additional supporting cost data from public sector offerors. Hoboken Shipyards, Inc., supra.

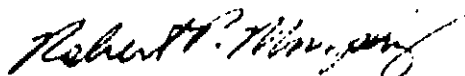
Finally, Ryder questions the accuracy of the DMPRL--a list of 1,008 items which provides historical data on parts used per hundred engines overhauled--and suggests that inaccuracies it has found limit the ability of offerors to prepare offers with regard to CFP. In support of this proposition, Ryder has submitted an analysis based on a sample taken from the DMPRL and the protester's own experience with the overhaul of 578 Army helicopter engines which are similar to, but not identical to, the Allison T63-A720. The results of Ryder's analysis purport to show that the previous DMPRL usage rates compared to the firm's experience vary by less than 10 percent for only 6 of 47 items sampled; in 15 instances, while Ryder experienced usage rates of less than 5 percent, the DMPRL showed rates between 25 and 110 percent and for 2 of the 47 items sampled, where the DMPRL showed negligible usage, Ryder experienced usage rates in excess of 50 percent.

Where estimates are provided in a solicitation, they must be based on the best information available; while the estimates must present a reasonably accurate representation of the agency's anticipated actual needs, there is no requirement that they be absolutely correct. H. Angelo & Co., Inc., B-244682.2, Oct. 30, 1991, 91-2 CPD ¶ 407.

The record shows that the DMPRL is compiled from historical data contained in agency files and we have no basis to

question its accuracy other than Ryder's assertion that, based on the protester's experience regarding 47 of the over 1,000 items on the list, usage rates vary widely in 17 cases. We see no reason why the protester's experience under a single contract for the overhaul of "similar" engines is a more accurate basis for predicting future usage than the DMPRL, which is based on a number of prior contracts for the overhaul of the engine which is the subject of G.S. procurement. We thus conclude that the information contained in the DMPRL is reasonably current and accurate, and we deny this aspect of the protest. H. Angelo & Co., Inc., supra.

The protest is denied.



for James F. Hinchman
General Counsel